IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 200 of 2000.
Reserved on: 27-6-2007.

Date of Decision: 02 .07. 2007.

State of H P. Appellant.

Versus

Nasiroo Din and others. Respondent.

Coram

Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]? No.

For the appellant : Sh.V K Verma, Additional Advocate General.

For respondents. : Shri Ramakant Sharma, Advocate.

Surinder Singh, J . (oral)

The respondents were put on trial before the Chief Judicial Magistrate, Solan for the offences punishable under Sections 325, 323 read with Section 34 of the Indian Penal Code. After the completion of trial in Criminal Case No. 21/2 of 1995, vide its judgment dated 6-9-1999, the respondents were acquitted.

The State-appellant felt aggrieved by the impugned judgment of acquittal has filed the instant appeal on the ground that the learned trial Court had based its findings on conjectures and surmises and, further, that there is every possibility of the appeal being accepted if the evidence is re-appraised.

The leave to appeal was granted on 28.4.2000 and now the appeal is taken up for final hearing.

Whether reporters of the Local papers are allowed to see the judgment? Yes.

I heard Shri V.K. Verma, learned Additional Advocate General for the State and Shri Ramakant Sharma, Advocate for the respondents.

In brief, the prosecution case is that on 2-11-1995, Shri Bashir Mohammad (PW4) was taking the water from the tap which was nearer to a water pond located near the house of the complainant Bashir Mohammad (PW5). In the meanwhile, respondent Nasiroo Din came there and questioned him as to how he was taking the water from the aforesaid tap. On this, Bashir Mohammad replied that he was taking it for the cattle. The respondents got enraged and started beating him with a Danda. It was further alleged that the said respondent also caused the injuries to the complainant, other persons also joined him and gave first and kick blows. The complainant raised the alarm. His wife Mst. Sajada (PW6) came there. She too was given beatings which caused injuries on her person. In the meanwhile, Chowkidar of Forest Depot Haripur named Shri Madda (PW2) had turned up on the spot who intervened and saved the complainant from the respondents. On the statement of Shri Bashir Mohammad, a formal FIR Exhibit-PA was recorded in Police Station, Dharampur. The police visited the spot, prepared the site plan Exhibit PW10/B and got Bashir Mohammad and his wife medically examined, Medico Legal Reports Exhibit PW8/A and B along with X-ray films Exhibit PW5/A and PW5/B. and Danda Exhibit P2 were also taken into possession which was produced by respondent Nasiroo Din and his wife Sajda during the investigation to the Police. After completing the challan, it was present before the Court.

Finding a prima facie case, the accused persons were charge-sheeted for the aforesaid offences to which they pleaded not guilty and claimed trial. The prosecution had examined the witnesses and the respondents were also examined under Section 313 of the Code of Criminal Procedure. No defense was led.

After appreciating the evidence adduced on record, the trial Court acquitted the respondents on the grounds, firstly, that the witnesses of the prosecution failed to corroborate on the material particulars making the case of the prosecution questionable and doubtful, secondly, PW Bashir Mohammad and his wife had told that they were relieved from the clutches of the respondents by Shri Madda (PW2) who at the relevant time, was a Chowkidar in the Depot of a private Contractor at Dharampur and according to him, he had visited the spot to pay Rs. 1000/- in the village of the respondents when he was crossing through the path leading inside the house of the complainant, he heard the cries of the complainant and his wife, he saw the respondents giving beatings to them and then he intervened but in the cross-examination, he stated that no beatings were given in his presence as alleged but he had simply gathered from the circumstances that the accused and the complainant party had a scuffle. He further stated that he never gave any statement to the Police, like Exhibit DX nor he was ever called by them. Therefore it is not understood as to how he was cited as prosecution witness and in view of his statement, aforesaid, he could not have been treated as witness of the incident.

Thirdly, Bashir Mohammad (PW4) had stated that Madda (PW2) had intervened and pushed all the respondents aside. It was also stated that when PW2 had arrived at the scene of occurrence, the complainant was lying on the ground and was being hit by the respondents with sticks but it was contrary to the version given by the alleged eye witnesses. Fourthly, the complainant as PW4 has categorically stated before the Court that in case the respondent Nasiroo Din gave him five bighas of land, in that event, there is no dispute with them which goes to show that the respondents were implicated with ulterior motives in the said case. Fifthly, Mst. Sajda (PW6) has deposed that she came to

the spot along with the alleged eye witness Madda (PW2) but in the cross-examination stated that her husband was already given beatings for about fifteen-twenty minutes before their arrival and when she arrived at the scene of occurrence, they saw the respondents were dragging her husband which version was found contradictory to the deposition of PW2. Sixthly, recovery of the alleged weapons of offence was not proved casting a serious doubt on the prosecution case. Seventhly, the grievous hurt alleged to have been caused on the person of Sajada (PW6) could not be related to the incident in question as the time factor with respect to the fracture was neither given by the radiologist nor by the Medical Officer who examined him. Doctor who initially examined Mst. Sajada (PW6) had stated that the time of fracture can be given by the radiologist whereas, the radiologist had stated that it could be given by the Doctor who examined the injured. In the given circumstances, mere presence of injuries could not connect the accused persons for causing fracture on her.

All these factors mentioned above also surfaced on re-appraisal of evidence by me and my conclusion coincides with the findings arrived at by the learned trial Court. Therefore, the impugned judgment cannot be called perverse.

It is a settled law that where two views are deducible from the evidence on record, the benefit of the view favourable to the accused has to be taken. By filing the appeal, the innocence of the accused does not get diluted.

Since the view taken by the learned trial Court is based upon the evidence adduced on record, therefore, it cannot be said to be perverse. Accordingly, the appeal merits dismissal and is accordingly dismissed. The respondents are discharged of their bail bonds entered

upon by each of them at any time during the proceedings of this case.

The matter is accordingly disposed of.

(Surinder Singh)
Judge.

July 2, 2007.
(bm)